# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1912.

## No. [illegible]57.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACKSON VINEGAR COMPANY.

IN ERROR TO THE CIRCUIT COURT OF HINDS COUNTY, STATE OF MISSISSIPPI.

FILED MAY 16, 1910.

(22,178)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1911.**

## No. 288.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

*vs.*

JACKSON VINEGAR COMPANY.

IN ERROR TO THE CIRCUIT COURT OF HINDS COUNTY, STATE OF MISSISSIPPI.

**INDEX.**



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1912.

1 and 2 Pleas and Proceedings Had and Done at a Regular Term of the Circuit Court of the First District of Hinds County, Mississippi, Begun and Held at the Court House Thereof, in the City of Jackson, on the First Monday of March, 1910, Being the 7th Day of March, 1910.

Present and presiding: The Honorable W. A. Henry, Judge of the Seventh Judicial District of Mississippi; M. S. McNeil, District Attorney; R. J. Harding, Sheriff; E. D. Fondren, Clerk.

Be it remembered, That on the 4th day of September, 1909, there was filed in said court the record on appeal from the Justice Court of J. M. Cade, Justice of the Peace, in the case of Jackson Vinegar Co. vs. Y. & M. V. R. R. Co., in words and figures following:

Jackson Vinegar Co.

JACKSON, MISS., 3, 4, '09.

Y. & M. V. Ry., City.

| | |
|---|---|
| 6 G. Phos. at 75¢ | $4.50 |
| Freight | .17 |
| Interest | .09 |
| Statutory Damages | 25.00 |
| | $29.76 |

STATE OF MISSISSIPPI,
*County of Hinds:*

Personally appeared before me, D. G. Harkey, the undersigned, a notary public, in and for the said City of Jackson, aforesaid State and County, duly commissioned and qualified and authorized
3 under the laws of the State to take acknowledgments and to administer oaths, C. H. Bickhart, proprietor of the Jackson Vinegar Co., (Not incorporated) who being by me duly sworn, deposes that the annexed account is truly and correctly made out from the books of the original entry of the said Jackson Vinegar Co., and that all the goods therein specified were sold and delivered at and about the dates and for the prices therein mentioned. That the prices charged therein are reasonable and for the market prices of the times, and that all charges therein are correct and the same amount as stated is just and true. That the same is a just claim, that nothing has been paid or delivered towards satisfaction of said account except that is credited thereon, that there are no counter claims, deductions, credits or legal effects known to affiant which have not been allowed; and that the said sum of Five & 94/100 Dollars is just claimed by, and now due, owing and remaining unpaid to the said Jackson Vinegar Co., by and from Y. & M. V. Ry., of Jackson, no part thereof having been paid or in any manner settled.

C. H. BICKHART.

Sworn and Subscribed before me this 4 day of March, 1909.

[SEAL.] D. G. HARKEY,
*Notary Public.*

The State of Mississippi to any lawful officer of Hinds County:

This is to command you to summon Y. & M. V. R. R. Co. to appear before me, a Justice of the Peace of said county, at my office on the 9th day of March, 1909, at 10 o'clock A. M., to answer the suit of Jackson Vinegar Company, on open account, and have there then this writ.

Witness my hand this 4th day of March, 1909.

J. M. CADE, *J. P.*

4 Endorsed.

I have this day executed the within writ personally, by delivering to within named defendant, Y. & M. V. R. R., B. J. Ramsey, Cashier, a true copy of this writ, this the 4th day of March, A. D. 1909.

J. A. ALLEN, *Constable.*

JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R. Co.

This cause coming on to be heard this 22nd day of June, 1909, came the parties and the testimony of witnesses and all the evidence having been heard, the same having been considered by the court, and the court being of the opinion that the plaintiff is entitled to recover judgment against the said defendant.

It is therefore ordered and adjudged that the plaintiff, the Jackson Vinegar Co., do have and recover of and from the said defendant the Y. & M. V. R. R. Co., the sum of $29.67, together with all costs to be taxed in this case, for all of which let execution issue.

Ordered and adjudged this 22nd day of June, 1909.

J. M. CADE, *J. P.*

STATE OF MISSISSIPPI,
*Hinds County:*

Know all men by these presents: That we, the Yazoo & Mississippi Valley Railroad Company, and F. M. West, as surety, are held and firmly bound unto Jackson Vinegar Co. in the sum of One Hundred Dollars, to be paid. The condition of the above bond is such that:

5 Whereas, the said Railroad Company has prayed and obtained an appeal to the next term of the Circuit Court of said County, from a judgment rendered by J. M. Cade, Justice of the Peace, on the 22nd day of June, 1909, for $29.76 and costs, in favor of Jackson Vinegar Co. against the said Railroad Company. Now if the said Railroad Company shall pay and satisfy such judgment as may be rendered against it in said Court, on said appeal, then

this bond to be void, otherwise to be and remain in full force and effect.

Signed and dated this 23rd day of June, 1909.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO.,
By F. M. WEST, *Att'y.*
F. M. WEST, *Surety.*

Filed and Bond Approved, June 24th, 1909.
J. M. CADE, *J. P.*

STATE OF MISSISSIPPI,
*County of Hinds:*

I, J. M. Cade, a Justice of the Peace of the said county, do certify that the foregoing is a copy of the record and proceedings before me in the case stated therein, as appears on my Docket.

Given under my hand, this the 4th day of September, 1909.

J. M. CADE, *J. P.*

Filed Sept. 4th, 1909.
E. D. FONDREN, *Clerk,*
By G. F. SWANN, *D. C.*

Issue being joined, and a jury of twelve good and lawful men having been duly empaneled and sworn to hear said cause, on the 17th day of March, 1910, the following evidence was submitted on behalf of plaintiff and defendant, to-wit:

6 *Stenographer's Record of the Evidence.*

In the Circuit Court of the First District of Hinds County, Mississippi, March Term, 1910.

JACKSON VINEGAR COMPANY
vs.
Y. & M. V. R. R. Co.

Transcript of Evidence.

Appearances:

Present and representing the Plaintiff: Hon. W. H. Watkins.
Present and representing the Defendant: Hon. Fred M. West.

Mr. F. C. NELSON, being duly sworn, testified as follows:

Direct examination by Mr. WATKINS:

Q. Mr. Nelson, you live here in Jackson?
A. Yes sir.
Q. You are now employed by the Jackson Vinegar Co.?

A. Yes sir.

Q. In a clerical capacity?

A. Yes sir.

Q. You were working for them—When did you go to work for them?

A. On March the first, last year.

Q. Now, you know as much about this case as I do. Tell the jury what this case is about?

A. The case is for the value of six gallons of cider short in a shipment made to Ye Tong Chung, at Greenville. The shipment reached there and was short six gallonss, at 75¢ a gallon, and freight charges on the six gallons of 17¢, to which is added the statutory penalty for failure to pay the claim within the time allowed, making the claim come to $29.67.

Q. Where was the vinegar shipped to?

A. To Ye Tong Chung, Greenville, Miss.

7 Q. From where and how was it shipped?

A. From the Jackson Vinegar Company, Jackson, over the Y. & M. V. R. R., to Greenville.

Q. Have you got the bill of lading?

A. Yes sir.

Q. Is this the original bill of lading (Showing)?

A. Yes sir.

Bill of lading above referred to is here introduced in evidence, and marked "Exhibit A."

Q. Did the keg ever come to hand?

A. Yes sir.

Q. How much vinegar did it have in it?

A. Ten gallons.

Q. How much was it short?

A. It was a sixteen gallon keg. It was short six gallons.

Q. What does this bill of lading recite that it is for?

A. A keg of vinegar weighing 150 pounds.

Q. How much would 150 pounds of vinegar be?

A. In this case, while it was billed vinegar, it was actually cider, and cider will weigh 8 pounds to the gallon, which would be 128 pounds for the 16 gallons, and the keg weighs 22 pounds, making 150 pounds.

Q. And how was that shipment when it reached Jackson?

A. The package was short six gallons.

Q. What was the value of that six gallons?

A. Seventy five cents a gallon, and freight charges of 17¢.

Q. Has any part of that ever been paid?

A. None.

Q. Who stated the weight in the bill of lading: by whom was it written in?

A. To the best of my knowledge and belief the weight is inserted by the railroad company. The whole bill of lading seems to

8 be made out in the same handwriting.

Q. Is it a regular bill of lading as issued by the railroad company?

A. Yes sir.

Q. Why do the railroad companies put the weight in the bills of lading?

A. Their revenue is based upon two things; classification and weight. The weight is given so that the freight charges may be made.

Q. The freight charges are based upon the weight?

A. Yes sir.

Q. Have you ever had any experience in the handleing of freight yourself, in the employ of the railroad company?

A. Yes sir.

Q. How many years?

A. December the 2nd, Monday morning at 10 o'clock, 1901, I went to work for the Southern Weighing and Inspecting Bureau at the Illinois Central Railroad Company's office in this town.

Q. State what the effect of this bureau is, what it is?

A. To see that the railway companies receive the proper compensation for freight charges, and to see that the freight is weighed and classified as it should be.

Q. They look after this for the various railroad companies?

A. Yes, sir, make a personal inspection, the bureau representatives.

Q. Did they do that in this particular case?

A. Yes sir.

Q. They have a representative here?

A. Yes sir, both here and at Greenville, and at intermediate points.

Q. What are the duties of these employees in inspecting freight?

A. It is the sworn duty of every bureau employee to see
9 that every shipment made by the railroad company is properly made and described——

Q. Are these weights gotten at through estimates, or by actually weighing the articles?

A. All employees of the bureau have positive instructions not to accept any weights unless they are standard. They must know that they are correct. There is no question at all about them being required to weigh the shipment.

Q. You say that the Y. & M. V. R. R. Co. uses one of the Bureau employees at Greenville?

A. Yes sir.

Q. And what are his duties?

A. When the bill of lading is issued——

By Mr. WEST:

Q. How do you know there is a representative of the Bureau at Greenville?

A. There is one there at the present time, I think, and before.

Q. Was he there at the time of the shipment?

A. I don't know, but I am sure that one was there.

By Mr. WATKINS:

Q. Has this organization been kept up all the time?
A. Yes sir.
Q. When did you leave the employ of the Bureau?
A. October 15th, 1909.
Q. Have you kept in touch with the organization since?
A. Yes sir.
Q. Is it kept up in the same way?
A. So far as I know, it is.
Q. Did they have a representative at Greenville when you were with them?
A. Yes sir.
Q. What do you say was the duty of that employee at Greenville?
A. It was his duty to see that every shipment of freight was properly weighed, classified and described.
Q. Who pays these employees?
A. These employees are paid indirectly by the lines on which they work, but directly by the Bureau. The operating expenses of the Bureau are assessed to the various companies for whom they work.
Q. They would be paid indirectly by the railroad for whom they were working, where they were working?
A. Yes sir. As an illustration, the *way*-master for the local freight office here works for the Y. & M. V., I. C., G. & S. I., and N. O. G. N., and his salary is pro-rated among the interested carriers.
Q. Why is this bureau necessary?
A. Well, to explain as an illustration: There was a system existing in New Orleans, two competitive carriers, parallel lines, the S. P and the T. & P., a shipper would go there with a shipment weighing say 250 pounds, to one of the lines, and they would refuse to handle it for 200 pounds as the shipper desired, and he would say he would carry it over to the competitor who would handle it for 200 pounds, and that's an illustration of why the bureau is in operation; to obtain the correct revenue and do away with false billing, etc.
Q. And it is the duty of the Bureau employee to see that the correct weight is put on every bill of lading?
A. Yes sir.
Q. That is the duty of the Bureau representative at the original point of shipment?
A. Yes sir.
Q. I will ask you what is his duty at the point of destination?
A. It is not only the duty of every Bureau representative to weigh the shipment at the original point, but it is his duty to weigh it and see that it is correct at the point of destination, or any intermediate point, where it is practicable to weigh the shipment.
Q. What is the custom of the railroad company to assess charges on weights that are guessed at?
A. They have positive instructions not to accept any weights at all, where it is practicable to scale the weights.
Q. What kind of a scale is used?

A. Generally a standard Fairbanks, and they have a regular scale inspector who makes regular trips over the system to see that the scales are correct.

Q. Now, when this shortage was discovered, what notice was given to the Y. & M. V. R. R. Co.?

A. Our claim was filed under date of November 3rd, 1908, for the shortage, and we furnished our affidavit, and——

Q. With whom was the claim filed?

A. C. T. Bevin, Agent.

Q. He is agent for the company here?

A. Yes sir.

Q. I will ask you whether the Y. & M. V. has a continuous line from Greenville to Jackson?

A. Yes sir.

Q. It would not have to be handled over any other line?

A. It was not necessary to do so, and it was not done in this instance, so far as their records show.

Q. Has any part of this claim ever been paid?

A. None whatever.

Cross-examination by Mr. WEST:

Q. You say the Y. & M. V. has a continuous line from Greenville to Jackson?

A. Yes sir, they have branches.

12 Q. Would they go directly to Greenville from here?

A. There is a line called the Pea Vine from Clarksdale to Greenville, and from Clarksdale to Jackson is a direct line, and they have three or four more indirect routes. Could go to Port Gibson and up.

Q. Can you state of your own knowledge over what lines this particular shipment was made?

A. I didn't go along with the shipment, but to the best of my knowledge and belief, and according to the records of the company, and the freight bills, I have have every reason to say that the Y. & M. V. handled it continuously.

Q. You don't know of your own knowledge how many gallons were in this keg which was shipped to Greenville, except what is shown by the bill of lading?

A. By the weight.

Q. And by that you say there was six gallons short?

A. Yes sir.

Q. And the only knowledge you have of that is shown by the bill of lading?

A. Yes sir.

Q. Do you know when this shipment was made from here to Greenville originally?

A. I think the files show.

Q. Will you please look and state when it was?

A. June 5th, 1908.

Q. And what became of it?

A. It was reshipped back to Jackson.

Q. When?

A. September 11th or 12th.

Q. About four months after it was first shipped from here?

A. Yes, about three months.

Q. I will ask you to introduce any paper you have showing the shipment here?

13 A. Here's a copy of the bill of lading. The original was furnished to you.

Q. Now, what is the weight on that bill of lading?

A. The weight is inserted by your agent, 125 pounds, but the correct weight was 150 pounds, as it was billed back.

Q. Explain to the jury how it was billed out of here at 125 pounds and remained there three months and was billed back at 150 pounds?

A. The Jackson Vinegar Company has no scales, and on those 16 gallon kegs they were billed at 100 pounds at first, and then 125, but the Bureau has estimated it at 150 pounds, and that's what they are billed at now.

Q. Was that the standard estimate at the time this shipment was originally made?

A. I cannot say.

Q. You don't know that the keg didn't actualy weigh 125 pounds when it was billed out of here?

A. I only know from the records that the package weighed 150 pounds and had 16 gallons of cider in it.

Q. And it was shipped out of here as weighing 125 pounds, and freight charges were paid accordingly?

A. The freight charges were paid by the consignee.

Q. Do you know whether the consignee received the shipment or not?

A. To the best of my knowledge he did.

Q. Do you know how long he kept it in his possession?

A. The bill of lading shows the shipment was made from here in June, and presumably he received it about that time, but whether he had it in his possession or not, I can't say.

Redirect examination by Mr. WATKINS:

Q. You say the consignee paid the freight in Greenville?

A. Yes sir, and we paid on the return from Greenville to Jackson.

14 Q. You are in the employ of the Jackson Vinegar Co. now?

A. Yes sir.

Plaintiff Rests.

Now comes the defendant, the Y. & M. V. R. R. Co., and by its attorney moves the Court to strike from the plaintiff's claim herein the item of $25.00 statutory penalty, and for cause says: That the said statute penalizes the defendant for making a defense regardless of the amount that may be recovered by the plaintiff; that it is an arbitrary fixation of an amount to be recovered by the plaintiff as a penalty, regardless of the amount that may be awarded by the

jury in plaintiff's favor, and for the further reason that the said penalty deprives the defendant of its property without due process of law and denies it the equal protection of the law as guaranteed to the defendant by the 14th Amendment to the Constitution of the United States.

The defendant further moves that the plaintiff's testimony be excluded unless it can show by positive proof that the shortage alleged in its claim occurred on the lines of defendant's railway.

Overruled. Exception.

Mr. A. H. DAVIS, being duly sworn, testified as follows:

Direct examination by Mr. WEST:

Q. Mr. Davis, what is your occupation?

A. Freight agent of the Y. & M. V. at Greenville.

Q. This is a suit by the Jackson Vinegar Company for the alleged loss of some freight shipped by them from Jackson to Ye Tong Chung at Greenville. I will ask you if you know of your own knowledge anything about that shipment?

A. There was a return shipment made by Ye Tong Chung
15 to the Jackson Vinegar Company, and the night it was billed out by the clerk I was down at the office and he called attention to the fact that——

Objection.

Q. You can't tell what he said, but you can tell what you know.

A. The billing clerk wanted to know what the standard weight on a keg of cider was and I said about 150 pounds. It had been left with a tag of the warehouse, and in the mean time the warehouse had been closed.

Q. Is that the tag you are talking about?

A. Yes sir.

Q. What is the weight on it?

A. In copying ink, 150 pounds.

Q. Do you know how long that shipment remained in the possession of the Chinaman?

A. From the records, it shows it was delivered to him on June 19th, 1908, and he reshipped it September 14th, according to that bill of lading.

Q. Do you know of your own personal knowledge whether there was any shortage in that keg when it was delivered back to the railroad company by the Chinaman?

A. I don't know myself.

Q. Do you know from your records whether there was any shortage when it was delivered back to the railroad company?

A. The records show no signs of it being in bad order either when it was delivered back to us or when it was first received. If it had been, in either event, it would have been noted, an exception would have been noted.

Q. What is this paper I show you?

A. It is a receipt for the shipment signed by Ye Tong Chung; it

authorizes the drayman to accept his shipment. The drayman is B. L. Ried.

Papers above referred to here introduced in evidence by the defendant.

16 Q. Is there any exception noted about this keg?
A. No sir.

Q. Do you know whether, as a matter of fact, that shipment was reweighed when it was delivered back to you?

A. There is nothing to indicate that it was reweighed and it was evidently not reweighed when it was tendered us again for shipment from the fact that we didn't think it was the same shipment.

Q. And you can't say from your own knowledge or from the records whether there was any shortage when it was delivered to you or not?

A. No sir.

Cross-examination by Mr. WATKINS:

Q. You don't know whether it was reweighed or not?
A. No sir.
Q. It was the duty of the clerk there to weigh it?
A. Yes sir.
Q. You have such an organization known as the Southern Inspecting and Weighing Bureau in your town?
A. Yes sir, and they don't weigh anything less than car loads.
Q. It was the duty of your clerk to weight that keg?
A. Yes sir.
Q. What is this tag here?
A. Receipt for the shipment of one keg of cider.
Q. What is this date right here?
A. Looks like 9-14 to me. It is the facsimile of the original.
Q. Look at this original and see if it is the same?
A. No, that looks like 9-12.
Q. This date is torn here (Showing)?
A. Yes sir.

Q. Who made that signature?
17 A. Mr. Leopard.
Q. Was he the man whose duty it was to weigh that shipment?
A. Yes sir.

Q. Before the issuance of that bill of lading it was his duty to weigh the shipment?
A. Yes sir.
Q. And that's what he is employed to do by the railroad company?
A. Part of his duty.
Q. Because that's the way the freight rates are collected?
A. Yes sir.
Q. And he has collected freight on this shipment for 150 pounds?
A. Yes sir.

Q. It was his duty to weigh it, and you can't say of your own knowledge that he didn't do it?

A. I can't say that he did or didn't.

Defendant rests.

"EXHIBIT A."

—— STATION, 9, 12, 1908.

Received from Yee Tun Chung, Greenville, Miss., by the Yazoo & Mississippi Valley Railroad Co., the following goods, in apparent good order, to be forwarded subject to rules and conditions contained in the Bills of Lading, Classifications and Tariffs of this Company, and upon the express condition that it will not carry and is not liable for loss or damage occurring beyond its own lines.

This receipt may be exchanged for a regular bill of lading.

Consignee: Jackson Vinegar Co.
Destination: Jackson, Miss.
Via —.

| Classes. | 1st. | 2nd. | 3d. | 4th. | 5th. | 6th. |
|---|---|---|---|---|---|---|
| Weights, subject to correction. | A. | B. | C. | D. | E. | |

| 18 No. Pkgs. | Description of Articles. | Weights. |
|---|---|---|
| 1 | Keg Vinegar | 150 |

A. H. DAVIS, *Agent.*

EXHIBITS TO THE TESTIMONY OF A. H. DAVIS.

*Agent's Stub.*

G'VILLE STATION, 9, —, 1908.

Delivered to the Yazoo & Mississippi Valley R. R. Co. by Lee Tun Chung, Greenville, Miss., as described below. Freight to be forwarded subject to rules and conditions contained in the Bills of Lading, Classifications and Tariffs of the Company, and upon the express condition that it will not carry and is not liable for loss or damage occurring beyond its own lines.

Consignee: Jackson Vinegar Co.
Destination: Jackson, Miss.
Via —.

| Classes. | 1st. | 2nd. | 3rd. | 4th. | 5th. | 6th. |
|---|---|---|---|---|---|---|
| Weights, subject to correction. | A. | B. | C. | D. | E. | |

| No. Pkgs. | Description of Articles. | Weights. |
|---|---|---|
| 1 | Keg Vinegar | 150 |

O. K. I. C. 12540.
1190.

—— ——, *Shipper.*

*Notice.*

G'ville. 6/19, 1908. Yee Tun Chung. Consignee. Pro. No. 754

Notice from The Yazoo & Mississippi Valley Railroad Co. Pleas remove the following articles.

19

| Org. Point Shipment. Con. Line Ref. | Billing Station. | Way-Bill. Date. | Way-Bill. No. | Car. Initial No. |
|---|---|---|---|---|
| J. V. Co. | Jaxon. | 6/15 | 8427 | A. R. L. 4857 |

| Number of Packages, Articles and Marks. | Weight. | Rate. | Charge |
|---|---|---|---|
| 1 Keg Cider. | 150 | 30 | .45 |
| 1 Box Faucets. | 10 | 31 | .03 |
| | | Total, | .48 |

Please deliver this shipment to —— —— Who is authorized to re ceipt for same in my name.

LEE TUN CHUNG, *Consignee.*

*Receipt for Shipment.*

This is duplicate of above notice, except that in place of orde signed by Consignee, appears the following signature:

B. L. RIED.

I hereby certify that the above and foregoing pages constitute a full, true and correct transcript of my shorthand notes as taken dur ing the trial of the above-styled case.

J. B. DODSON,
*Official Stenographer, 7th Judicial District of Mississippi.*

Filed May 10th, 1910.

E. D. FONDREN, *Clerk,*
By G. F. SWANN, *D. C.*

The within notes examined and found correct.

F. M. WEST,
*For Defendant.*

The within notes are correct.
May 10, 1910.

WATKINS & WATKINS,
*For Plaintiff.*

20 The following instruction having been asked on behalf of the Plaintiff, was by the Court given:

724.

JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R. Co.

The court instructs the jury to find for the plaintiff for the amount sued for.
Given.

Filed March 17th, 1910.
E. D. FONDREN, *Clerk.*

The following instructions having been asked on behalf of the Defendant, were by the Court refused:

1.

724.

JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R.

The court instructs the jury to find for the Defendant.
Refused.

Filed March 17th, 1910.
E. D. FONDREN, *Clerk.*

2.

724.

JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R.

The court instructs the jury that if they find a verdict for the plaintiff in this case they must find only the amount of the actual damages sustained by the plaintiff, and the jury have no legal right to find any additional amount by way of penalty for non-payment or statutory damages.
Refused.

Filed March 17th, 1910.
E. D. FONDREN, *Clerk.*

21 3.

724.

JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R.

The court instructs the jury for the defendant that if they believe from a preponderance of the evidence herein that the shipment in question was short 6 gallons when delivered to the said defendant, then they will find for the defendant.
Refused.

Filed March 17th, 1910.
E. D. FONDREN, *Clerk*.

Whereupon, after hearing arguments of counsel, the jury retired, and presently returned into open court their verdict as follows:
"We, the jury, find for the plaintiff, and assess his damages at $29.76 Dollars.
Whereupon, the following judgment was entered, to-wit:—

724.

THE JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R. Co.

This day this cause coming on to be heard, issue having been joined, came a jury composed of twelve good and lawful men, to-wit: A. W. Smythe and eleven others, who, after hearing the evidence and the instructions of the court, retired, and rendered the following verdict: "We, the jury, find for the plaintiff, and assess his damages at $29.76 Dollars", Wherefore, it is ordered and adjudged that plaintiff, the Jackson Vinegar Co., do have and recover of the defendant, the Yazoo & Miss. Valley R. R. Co., the sum of Twenty-nine and 76/100 Dollars, with interest at 6% from June 22, 1909, making a total of Thirty & 66/100 Dollars, and all costs, for which let execution issue.

W. A. HENRY, *Judge*.

22 Entered Minute Book 12, page 616.

E. D. FONDREN, *Clerk*,
By G. F. SWANN, *D. C.*

*Motion for New Trial.*

In the Circuit Court of Hinds County, Mississippi, to the March Term, A. D. 1910.

No. 724.

THE JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R. Co.

Motion for New Trial.

Now comes the defendant, the Yazoo & Mississippi Valley Railroad Company, and moves the court that it do set aside the judgment heretofore entered in this cause awarding plaintiff the sum of $29.76, with interest thereon at six per cent. from June 22nd, 1909, with all costs of suit, and in support of said motion says:

1. The court erred in not sustaining defendant's motion to strike from plaintiff's claim his demand for statutory penalty of Twenty Five Dollars for failure to settle the claim sued on within sixty days from date of filing written notice of loss or damage, etc.

2. The court erred in granting the instruction asked by plaintiff.

3. The court erred in refusing the instructions numbered 1, 2 and 3, asked by defendant.

Wherefore, premises considered, defendant moves that the said judgment may be set aside by this court and that a new trial be granted defendant herein because of said errors.

This April 19th, 1910.

Respectfully submitted,
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
By F. M. WEST, *Its Attorney.*

Filed April 20th, 1910.
E. D. FONDREN, *Clerk.*

23 *Order Overruling Motion for New Trial.*

In the Circuit Court of Hinds County, Mississippi, March Term, A. D. 1910.

No. 724.

THE JACKSON VINEGAR CO.
vs.
Y. & M. V. R. R. Co.

Order Overruling Defendant's Motion for New Trial.

Coming on to be heard the defendant's motion for a new trial herein, and the court having duly considered the same, and the

court being of the opinion that the said motion should be overruled and no new trial granted herein, it is therefore:

Ordered that the said motion of said defendant be, and it is hereby overruled.

W. A. HENRY,
*Circuit Judge.*

*Petition for Writ of Error.*

UNITED STATES OF AMERICA,
*State of Mississippi:*

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
THE JACKSON VINEGAR COMPANY.

To the Honorable William A. Henry, Judge of the Circuit Court for the Seventh District of Mississippi:

The petition of the Yazoo & Mississippi Valley Railroad Company, and F. M. West, respectfully shows that on the 17th day of March, A. D. 1910, the said Circuit Court rendered judgment against petitioners in a certain cause wherein your petitioner, the Yazoo & Mississippi Valley Railroad Company was the defendant and the other petitioner was its surety on its appeal bond, and the Jackson Vinegar Company was plaintiff, for the sum of $29.76 with six per centum interest thereon from June 22nd, 1909, together with all costs;
24 and in legal effect awarded execution thereon as will appear by reference to the record and proceedings in said cause; that in the said suit was drawn in question the validity of a certain statute of the State of Mississippi, on the ground of its being repugnant to the Constitution of the United States and the Amendments thereto; and the decision of the said Circuit Court was in favor of the validity of such statute; and that in said suit your petitioners, who were the defendants, claimed the privilege and immunity which was set up and claimed specially under such constitution and statutes, and under the said Fourteenth Amendment.

And the decision of the said Circuit Court of the State of Mississippi was final, and the said Circuit Court is the court of last resort in said State, in said cause.

Wherefore your petitioners are aggrieved, and they pray for a Writ of Error, with citation and supersedeas, returnable into the Supreme Court of the United States.

And as in duty bound, they will ever pray, etc.

THE YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY,
F. M. WEST,
By MAYES & LONGSTREET,
*Their Attorneys.*

Filed April 26th, 1910.
E. D. FONDREN, *Clerk*,
By G. F. SWANN, *D. C.*

STATE OF MISSISSIPPI,
*Hinds County:*

Desiring to give petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition, and in the Assignment of Errors, by which it is
25 accompanied, it is ordered that a Writ of Error be, and the same is hereby allowed to the said court, and that the same be made a supersedeas, the bond in the penal sum of One Thousand Dollars, also herewith presented, being hereby approved.

In testimony whereof, witness my hand, this the 20th day of April, A. D. 1910.

W. A. HENRY,
*Judge Circuit Court, Seventh District of Mississippi.*

Filed April 26th, 1910.

E. D. FONDREN, *Clerk,*
By G. F. SWANN, *D. C.*

*Writ of Error Bond.*

Know all men by these presents, that the Yazoo & Mississippi Valley Railroad Company, F. M. West, as principals, and the Illinois Central Railroad Company, and the Canton, Aberdeen & Nashville Railroad Company, as sureties, are held and firmly bound unto the Jackson Vinegar Company, of Jackson, Mississippi, in the sum of One Thousand Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, by these presents.

Witness our signatures, this the 20th day of April, A. D. 1910.

The condition of the foregoing obligation is such that, whereas, lately, at a term of the Circuit Court of Hinds County, Mississippi, in a suit pending in said Court, between the Jackson Vinegar Company and the Yazoo & Mississippi Valley Railroad Company, a judgment was recovered against the said Yazoo & Mississippi Valley Railroad Company, defendant, in favor of the said Jackson Vinegar Company, for the sum of $29.76 with interest thereon at 6 per cent. from June 22nd, 1909, and whereas, the said Yazoo
26 & Mississippi Valley Railroad Company and another have obtained a Writ of Error, and filed a copy thereof in the Clerk's office of said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Jackson Vinegar Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, therefore, if the said Yazoo & Mississippi Valley Railroad Company, and F. M. West, shall prosecute their Writ of Error to effect, and shall answer all damages and costs if they shall fail to

make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO. AND
F. M. WEST, *Principals,*
By EDWARD MAYES, *Its Att'y in Fact;*
THE ILLINOIS CENTRAL RAILROAD COMPANY,
By EDWARD MAYES, *Its Att'y in Fact.*
THE CANTON, ABERDEEN & NASHVILLE RAILROAD CO.,
By EDWARD MAYES, *Its Att'y in Fact,*
*Sureties.*

Filed April 26th, 1910.

E. D. FONDREN, *Clerk,*
By G. F. SWANN, *D. C.*

27 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the Jackson Vinegar Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Circuit Court of Hinds County, Mississippi, wherein the Yazoo & Mississippi Valley Railroad Company and F. M. West are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. A. Henry, Judge of the Circuit Court for the Seventh District of Mississippi, this the 20th day of April A. D. 1910.

W. A. HENRY,
*Judge Circuit Court, Seventh District of Mississippi.*

UNITED STATES OF AMERICA,
*Southern District of Mississippi:*

Received the within citation on the 26th day of April, 1910, and served the same on the within named, the Jackson Vinegar Company, on the 26th day of April, A. D. 1910, personally, by delivering to Will H. Watkins, who is the Attorney of Record of said company, in his own hands, a true and exact copy of the same, also delivered to him at the same time a true and exact copy of the writ of error in the same cause, issued pursuant to the fiat of the Honorable W. A. Henry, Judge of the Circuit Court, Seventh District of

Mississippi, by L. B. Moseley, Clerk of the Circuit Court of the United States in and for the Southern District of Mississippi.

This the 26th day of April, A. D. 1910.

FRED W. COLLINS, *Marshal,*
By F. W. COLLINS, JR., *Deputy.*

Filed April 28th, 1910.

E. D. FONDREN, *Clerk.*

28 UNITED STATES OF AMERICA,
*State of Mississippi, County of Hinds:*

I, E. D. Fondren, Clerk of the Circuit Court of the County of Hinds, State of Mississippi, and having in my official keeping the records and proceedings in the case of Jackson Vinegar Company vs. Yazoo & Mississippi Valley Railroad Company, No. 724 on the Docket of said Court, do hereby certify that the above and foregoing 27 pages contain a true, full, and correct transcript of the record and proceedings in said cause, the originals of which are now on file and of record in my said office at Jackson, in said County of Hinds, and State of Mississippi.

Witness my signature, and the seal of said Court, at Jackson, in the County of Hinds, and State of Mississippi, this the 13th day of May, in the year of Our Lord, Nineteen Hundred and Ten.

[Seal Circuit Court, Hinds County Miss.]

E. D. FONDREN,
*Clerk of the Circuit Court of Hinds County,*
*Seventh District of Mississippi.*

29 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable William A Hinds, Judge of the Circuit Court for the Seventh District of Mississippi, Greeting:

In the cause in the record and proceedings, and also in the rendition of the judgment of a plea which is in the Circuit Court Seventh District of Mississippi, before you, being the highest court of law or equity of the said State, in said cause, in which a decision could be had in said suit between the Jackson Vinegar Company, as plaintiff, and the Yazoo & Mississippi Valley Railroad Company, as defendant, and wherein judgment was rendered in favor of said plaintiff and against said defendant in said court, on March 17th, A. D. 1910, in the sum of Twenty Nine & 76/100 Dollars ($29.76), together with six per centum interest thereon from June 22nd, 1909 and costs; and in which suit was drawn in question the validity of a certain statute of the State of Mississippi, on the ground of its being repugnant to the Constitution of the United States, and the Amendments thereto, and to the Statutes of the United States, and the decision of the said Circuit Court was in favor of the validity thereof;

and in which suit was also drawn in question the validity of a privilege and immunity claimed and set up by the said Railroad Company under the Constitution and Statutes of the United States, and under the Fourteenth Amendment to such Constitution, and the decision of the said Circuit Court was against the said privilege and immunity so set up and specially claimed; and a manifest error hath happened to the great damage of the said Yazoo & Mississippi Valley Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you may have the same at Washington on the 20th day of May next, in the
30 said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 20th day of April, in the year of our Lord, Nineteen Hundred and Ten.

Witness also, my signature, and the seal of the Circuit Court of the United States in and for the Southern District of Mississippi, this the day and year aforesaid.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*

STATE OF MISSISSIPPI,
*Hinds County, Circuit Court Thereof:*

I, E. D. Fondren, Clerk of the Circuit Court, for the County of Hinds, Seventh District of Mississippi, by virtue of the within Writ of Error, and in obedience thereto, do hereby send herewith the record and proceedings in said cause, duly certified and authenticated according to law, to the Honorable Supreme Court of the United States.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, in the City of Jackson, Hinds County, Mississippi, in the year of our Lord, Nineteen Hundred and Ten, and of the Independence of the United States One Hundred and Thirty Four.

[Seal Circuit Court, Hinds County, Miss.]

E. D. FONDREN,
*Clerk of the Circuit Court,*
*Hinds County, Mississippi, Seventh District.*

[Endorsed:] Entered. No. 1716. Page —. The Yazoo & Miss. Valley R. Co. Pl'ff in Error vs. The Jackson Vinegar Co., Def't in Error. Writ of Error. Filed April 28th, 1910. E. D. Fondren, clerk.

31 UNITED STATES OF AMERICA, *ss:*

To the Jackson Vinegar Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Circuit Court of Hinds County, Mississippi, wherein the Yazoo & Mississippi Valley Railroad Company and F. M. West are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. A. Henry, Judge of the Circuit Court for the Seventh District of Mississippi, this, the 20th day of April A. D. 1910.

W. A. HENRY,
*Judge Circuit Court, Seventh District of Mississippi.*

UNITED STATES OF AMERICA,
*Southern District of Mississippi:*

Received the within citation on the 26th day of April 1910, and served the same on the within named, the Jackson Vinegar Company, on the 26th day of April A. D. 1910, personally, by delivering to Will H. Watkins who is the Attorney of Record of said company, in his own hands, a true and exact copy of the same, also delivered to him at the same time a true and exact copy of the writ of error in the same cause, issued pursuant to the fiat of the Honorable W. A. Henry, Judge of the Circuit Court, Seventh District, of Mississippi, by L. B. Moseley, Clerk of the Circuit Court of the United States in and for the Southern District of Mississippi.

This, the 26th day of April A. D. 1910.

FRED W. COLLINS, *Marshal,*
By F. W. COLLINS, JR., *Deputy.*

[Endorsed:] Entered. No. 1716. Page —. The Yazoo & Miss Valley R. Co., Pl'ff in Error, vs. The Jackson Vinegar Co., Def't in Error. Citation. Filed April 28th 1910. E. D. Fondren, clerk.

32 UNITED STATES OF AMERICA:

Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
v.
THE JACKSON VINEGAR COMPANY.

*Assignment of Errors.*

Afterwards, to-wit, on the 20th day of April 1910, before the Justices of the Supreme Court of the United States, at the Capitol, in the City of Washington, comes the Yazoo & Mississippi Valley Rail-

road Company, and the said F. M. West, by error, by their, and each of their, attorney, Edward Mayes, and say that in the record and proceeding aforesaid there is damaging error in the particulars following, to-wit:

First. The said Circuit Court for the Seventh District of Mississippi erred in rendering the judgment on the 17th day of March A. D. 1910, whereby Chapter 196 of the Acts of the Legislature of the State of Mississippi, for the year 1908, imposing a liability of Twenty Five Dollars, upon the said railroad company, as a penalty, for its failure to settle the plaintiff's demand within 60 days from the date of the filing of written notice of demand, was upheld, and was held not to be repugnant to the Constitution of the United States and the Amendments thereto, on the ground that the same was a deprivation of the property of the said railroad company without due process of law, and denied the said railroad company the equal protection of the laws.

And the Yazoo & Mississippi Valley Railroad Company and F. M. West, pray that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that they be restored by occasion of the said judgment.

THE YAZOO & MISSISSIPPI VALLEY
RAILROAD CO.,
F. M. WEST.
By MAYES & LONGSTREET, *Att'ys.*

[Endorsed:] The Yazoo & Miss. Valley R. Co. Pl'ff in Error vs The Jackson Vinegar Co., Def't in Error. Assignment of Errors. Filed April 26, 1910. E. D. Fondren, clerk. G. F. Swann, dep.

Endorsed on cover: File No. 22,178. Mississippi, Hinds County, Circuit Court. Term No. 288. Yazoo & Mississippi Valley Railroad Company, plaintiff in error, vs. Jackson Vinegar Company. Filed May 16th, 1910. File No. 22,178.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1911.

No. [redacted]57.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error,

*vs.*

JACKSON VINEGAR COMPANY,
Defendant in Error.

## BRIEF FOR PLAINTIFF IN ERROR.

EDWARD MAYES,
Attorney for Plaintiff in Error.

CHARLES N. BURCH,
Of Counsel.

TUCKER PRINTING HOUSE JACKSON MISS

# In the Supreme Court of the United States

**October Term, 1911.**

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**No. 288.**

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THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error,

*vs.*

JACKSON VINEGAR COMPANY,
Defendant in Error.

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## Brief in Behalf of Plaintiff in Error.

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### Statement of the Case.

The Jackson Vinegar Company brought suit against the Railroad Company in the Magistrate's Court at Jackson, Mississippi, to recover the value of six gallons of cider which was claimed to be leakage or shortage out of a keg shipped from Greenville, Mississippi, to Jackson; also to recover twenty-five ($25.00) dollars penalty for failure on the part of the Railway Company to settle the claim of the Vinegar Company within the period fixed by the statute of Mississippi.

The controversy in this Court arises about the statutory penalty of $25.00, which is claimed to be a deprivation of the Railroad Company's property without due process of law, and a denial of the equal protection of the laws.

The bill of particulars filed by the plaintiff will be found on page 1 of the Record, and a succinct

statement by the principal witness will be found at the top of Record, page 4.

The judgment rendered by the highest Court in the State having jurisdiction, which was the State Circuit Court, and from which this appeal was taken, will be found on Record, page 14, and includes the $25.00 penalty.

The motion for a new trial in the State Circuit Court raised the Federal question in this way: It assigned as error the action of the trial court in overruling the motion to strike the statutory penalty from the plaintiff's claim, which motion and the action of the Court appears in the Record, at the bottom of page 8; also, it assigns as error the action of the Court in granting the peremptory instruction for the plaintiff, which appears on page 13 of the Record; and also assigns as error the action of the Court in refusing Instructions 1, 2 and 3, requested by defendant (Record, pages 13 and 14).

The statute of the State of Mississippi under which this action arises, and the validity of which is to be tested by this Writ of Error, is Chapter 196 of the Laws of 1908, page 205, which is amendatory of Section 4070 of the Mississippi Code of 1906, and is as follows:

"AN ACT to amend Section 4070 of the Code of 1906 so as to require common carriers to settle claims for lost or damaged freight within reasonable time, and on failure so to do, to pay a penalty of twenty-five dollars in addition to actual damages.

"Section 1. *Be it enacted by the Legislature of the State of Mississippi*, That Section 4070 of the Mississippi Code of 1906 be, and the same is hereby, amended so as to read as follows:

"Claims for damages or lost freight to be settled promptly.

"4070. Railroads to settle claims for lost or damaged freight within reasonable time (Laws 1904, p. 152).—Railroads, corporations and individuals engaged as common carriers in this state are required

to settle all claims for lost or damaged freight which has been lost or damaged between two given points on the same line or system, within sixty days from the filing of written notice of the loss or damage with the agent at the point of destination; and where freight is handled by two or more roads or systems of roads, and is lost or damaged, claims therefor shall be settled within ninety days from the filing of written notice thereof with the agent by consignee at the point of destination. A common carrier failing to settle such claims as herein required shall be liable to the consignee for twenty-five dollars damages in each case, in addition to actual damages, all of which may be recovered in the same suit, *provided* that this section shall only apply when the amount claimed is two hundred dollars or less.

"Sec. 2. That this act take effect and be in force from and after its passage.

"Approved March 20, 1908."

**UNITED STATES OF AMERICA,**

**SUPREME COURT OF THE UNITED STATES.**

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY

*v.*

THE JACKSON VINEGAR COMPANY.

---

**Assignment of Errors.**

Afterwards, to-wit, on the 20th day of April, 1910, before the Justices of the Supreme Court of the United States, at the Capitol, in the City of Washington, comes the Yazoo & Mississippi Valley Railroad Company, and the said F. M. West, by error, by their, and each of their, attorney, Edward Mayes, and say that in the record and proceedings aforesaid there is damaging error in the particulars following, to-wit:

First. The said Circuit Court for the Seventh District of Mississippi erred in rendering the judgment on the 17th day of March A. D., 1910, whereby Chapter 196 of the Acts of the Legislature of the State of Mississippi, for the year 1908, imposing a liability of twenty-five dollars upon the said railroad company, as a penalty, for its failure to settle the plaintiff's demand within 60 days from the date of the filing of written notice of demand, was upheld, and was held not to be repugnant to the Constitution of the United States and the amendments thereto, on the ground that the same was a deprivation of the property of the said railroad company without due process of law, and denied the said railroad company the equal protection of the laws.

And the Yazoo & Mississippi Valley Railroad Company and F. M. West, pray that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that they be restored by occasion of the said judgment.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,

F. M. WEST,

By MAYES & LONGSTREET, Attys.

## Argument.

A statute somewhat similar to the one involved in this case has already been passed upon by this Court in the two cases of

*Seaboard Air Line v. Seegers*, 207 U. S., 73;
*Atlantic R. R. Co. v. Mazurky*, 216 U. S., 122.

In those cases the Court held that the South Carolina statute neither infringed the constitutional prohibition against the deprivation of property without due process of law, nor the constitutional provision that interstate commerce might be regulated by Congress.

There is, however, a difference between the Mississippi statute and the South Carolina statute, which we submit is controlling. The South Carolina statute contains the following proviso: "That unless such consignee or consignees recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid."

The Mississippi statute contains no such proviso. Under the Mississippi law as it is written, if the freight claim propounded is not settled within the period specified, the penalty follows "in addition to actual damages," without any regard whatever to the question about the amount of actual damages recovered provided only there be some actual damages.

For illustration, under the Mississippi statute a claim could be submitted for damages inflicted on a shipment of freight such damages being claimed to be $100.00. If the Railroad Company failed to settle it within the period fixed by the statute and suit be brought, the $25.00 is recoverable, provided only the plaintiff shall recover any damages whatever. If he obtain judgment for $5.00, he gets his $25.00 penalty, although in fact the demand propounded by him which the Railroad Company declined to settle or failed to settle, was twenty times as great, and although, therefore, its failure to settle stands justified both morally and legally. But *ita lex scripta*; and

for the very reason that the law is so written we contend that it is a violation of the fourteenth amendment to the Federal Constitution.

It cannot even be said that the present shape of the law is a mere inadvertence. This law took its origin in Chapter 104 of the Acts of 1904, which we make Appendix "A" hereto. By reference to that statute it will be seen that the penalty fixed upon the Railroad Company for not making prompt settlement, was as follows: That the Company "shall be liable to the consignee for twenty-five per cent damages on the amount recovered for such loss or damage," etc.

Thus as this statute was written it was substantially the same in its legal effect as the South Carolina statute. The statute, however, was brought forward as Section 4070 of the Code of 1906, and the Court will see by reference to that section that the Code itself refers to this law as being the original of the section. But yet in bringing the law forward the provision that the liability should be in case of delict twenty-five per cent damages on the amount recovered, was changed into the provision whereby the element that the amount recovered should have any connection whatever with the recovery of penalty was eliminated; and an absolute penalty of $25.00 was imposed, without respect to what the amount of the original demand was as compared with the amount of recovery; and without any regard whatever to what shall be the amount of the recovery of actual damages, provided only there be some recovery.

As we showed above, under this statute any amount might be demanded up to $200.00, and any amount might be recovered down to fifty cents, or even one cent, and the penalty follows.

We, therefore, submit that this statute deprives the Railroad Company of its property without due process of law.

It is not necessary to analyze the South Carolina cases bearing on this topic, for the reason that of

course they are all predicated on the South Carolina statute.

Neither is it necessary to analyze the North Carolina cases, for the reason that the North Carolina statute is identical with that of South Carolina. They both differ in the particular which we have pointed out, from the Mississippi statute.

It is immaterial that in the present case the record does not show that the Defendant in Error recovered actual damages less in amount than what it originally claimed.

The constitutionality of a law is to be tested not by what has been done under it, in the specific instance, but by what may be done under it as a general rule.

*Southwestern R. R. Co., v. Commonwealth*, 107 Va., 771;
*Stewart v. Palmer*, 74 N. Y., 171;
*St. Louis R. R. Co. v. State*, (Okla., 1910), 107 Pas., 929.

Respectfully submitted,

EDWARD MAYES,
Attorney for Plaintiff in Error.

CHARLES N. BURCH,
Of Counsel.

## APPENDIX.

### Chapter 104.

H. B. No. 213.

AN ACT requiring railroads to settle all claims for lost or damaged freight within a reasonable time.

Railroads to settle claims for lost or damaged freight within reasonable time.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That all railroads, all corporations and individuals engaged as common carriers operating in this state shall be required to settle all claims for lost or damaged freight within a reasonable time, to-wit: that freight lost or damaged between two given points on the same line, or system, shall be paid within sixty days from the filing of written notice with the agent of the railroad or other company at the point of destination of said freight of the loss or damage thereof. And where freight is handled by two or more roads or systems of roads, and the same is lost or damaged, said claim shall be paid within ninety days from the filing of written notice with the agent of the railroad or other company at the point of destination of said freight, by the consignee of the loss or damage thereof; *provided,* that this section shall only apply to claims against such railroad or other companies where the amount claimed is fifty ($50.00) dollars or less.

Twenty-five per cent damages assessed for failure to comply with this act.

SEC. 2. That any railroad or system of railroads, and all corporations and individuals engaged as common carriers, failing to comply with the provisions of section 1 of this act shall be liable to the consignee for twenty-five per cent damages on the amount recovered for such loss or damage after the time provided in this act within which such settlement shall be made.

SEC. 3. That all laws or parts of laws in conflict with this act be, and the same are hereby repealed.

SEC. 4. That his Act take effect and be in force from and after its passage.

Approved March 10, 1904.

# No. 57.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

~~No. 222.~~

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error,

vs.

JACKSON VINEGAR COMPANY
Defendant in Error.

## REPLY BRIEF FOR PLAINTIFF IN ERROR.

EDWARD MAYES,
Attorney for Plaintiff in Error.

CHARLES N. BURCH,
Of Counsel

HEDERMAN BROS., JACKSON, MISS.

# IN THE
# SUPREME COURT OF THE UNITED STATES
## OCTOBER TERM, 1911.

No. 288.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error,

vs.

JACKSON VINEGAR COMPANY
Defendant in Error.

## BRIEF OF PLAINTIFF IN ERROR, IN REPLY.

Counsel for Defendant in Error do not in their brief correctly state our position, and of course are at fault in their answer to that position.

They say (Brief p. 9) that

"The Plaintiff in Error says that under the statute as written * * * a penalty is imposed merely for non-payment of a debt."

Again, on Brief, p. 7, they say that

"The Plaintiff in Error says that the statute deprives it of its property without due process of law because by reason of the construction which it places upon the statute a penalty is enforced merely for the collection of a debt and not to compel the performance of a legal duty."

Such was not, and is not, our position. Our original brief states it clearly on page 5, to be that "Under the Mississippi law it is **written**"—(not as we **construe** it), "if the freight claim propounded is not settled within the period specified, the penalty follows in addition to actual damages, without any regard whatever to the question about the amount of actual damages recovered, provided only there be some actual damages."

Our criticism of the statute, therefore, was not that a penalty is imposed "merely for non payment of a debt;" but that it is imposed for failure to settle the claim as propounded, **even although the judicial investigation shall have determined the fact to be that the claim was excessive.**

The Supreme Court of Mississippi itself, in the case of Mobile R. R. Co., 98 Miss., 461 (decided since the judgment in this case was rendered and appeal taken to this Court) clearly recognizes our position that the statute, as written, if taken literally, would violate the fourteenth amendment; **and the Court endeavors to save the statute by construction.**

**Railroad Co. v. Brandon**, 98 Miss., 461; and

**Seaboard Air Line v. Seegers**, 207 U. S., 78;

**St. Louis, etc., Railway Co. v. Wynne**, dec. Apl 15, 1912.

The **Brandon** case above named, which is relied on by Defendant in Error, was decided January 16, 1911 (See 53 South. Rep., p. 957), nearly a year after this appeal was taken to this Court.

We submit that the effort of the State Supreme Court to save the statute by construction, was a failure; that the statute, even as construed, is still obnoxious to the fourteenth amendment, and void; and we submit that the State Court misconceived and misapplied the **Seegers** case.

In the **Brandon** case, plaintiff had preferred a claim against the Mobile and Ohio Railroad Company for **sixty** dollars, alleged to be damages done to a lot of household goods. Ninety days expired without a settlement. **Brandon** sued and recovered judgment, not for sixty dollars, but for fifty; and the penalty was imposed. Thereupon the railroad company appealed to the State Supreme Court; and contended that the statute should be so construed as to apply only in those cases where (like the Carolina statutes expressly provide) the claimant recovers judgment fixing his actual damages at the full amount of his claim; for, **it was argued**, unless the statute be so construed, it would violate the equal protection clause of the fourteenth amendment.

The Mississippi Court clearly recognized the fact

that the statute, taken as it was written, would be unconstitutional. However, they declined to construe it as imposing the penalty only in cases where plaintiff recovers the full amount demanded. They said: "The statute contains no such limitation upon the right to recover the penalty, and we cannot ingraft such upon it." (p. 466, bottom.)

The Court then proceeded immediately to **construe** the statute, and held that it did not violate the fourteenth amendment, because "The claim contemplated by the statute is the amount **actually due**, and not necessarily the amount claimed by the party suffering the damage. All the carrier is required to do in order to be relieved of the penalty is to pay or tender within sixty days or ninety days to the party entitled the amount actually due. Should such tender be made and refused, the penalty cannot be collected." (p. 467.)

Thus the Court **construed** the language of the statute, "to settle all claims," to mean only "to pay or tender the amount actually due."

But we submit that the statute, so construed, none the less violates the fourteenth amendment: because it (1) awards a penalty to the plaintiff even when he has propounded an excessive or fraudulent claim, and, at the same time, (2) requires the carrier, **in all cases**, no odds what might be the circumstances, to determine accurately, and under pain of a penalty for any failure, and without regard to good faith of the carrier, the amount of the claimant's damages. It is a statute which means, as the Mississippi Court holds, in effect, that even in an instance

where the claimant propounds an excessive and unrecoverable demand, and the carrier has every reason to believe it, and the Courts afterward so adjudge; yet still, under the pain of a penalty, the carrier must ascertain and pay or tender the proper sum, and that within 60 or 90 days.

In the **Brandon** case the Mississippi Supreme Court, in speaking of a shipment of household goods, based its decision on the statement that "the amount of damage sustained can be as easily ascertained by the carrier as by the claimant;" and evidently supposed that in so postulating the predicate for its position, it was following this Court in the **Seegers** case. We submit that it was a misapplication of that case; the two statutes and the conditions were greatly different.

It is evident that the learned justice who delivered the opinion of this Court in the **Seegers** case prepared that opinion, and employed the expressions used in it, with a studious eye on the previous decision of this Court in **Gulf C. & S. F. R. Co. v. Ellis**, 165 U. S., 150, in which the opinion of the Court had been delivered by himself. The **Seegers** case did not overrule the **Ellis** case, but distinguished. It neither retracted nor modified the statements of the **Ellis** case about the constitutional restrictions on the powers of classification, where it was said that such classifications "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Again:

**Mr. Justice Brewer,** in the **Seegers** case, was passing on a statute which by its very terms could have no operation whatever until first the plaintiff was judicially adjudged to have propounded only a claim wholly lawful and just; and as to that statute and its effect he said (page 78):

"It is true that no penalty is cast upon the shipper, yet there is some guaranty against excessive claims in that, as held by the Supreme Court of the State in Best v. Seaboard Air Line R. Co., supra, there can be no award of a penalty unless there be a recovery of the full amount claimed."

Thus is clearly emphasized the fact that there is in the Carolina statute a "guaranty against excessive claims" by the plaintiff; and is clearly indicated that such fact was material in the Court's judgment of the case; but the Mississippi statute throws to the winds any and all question of such guaranty, and means (as it was applied in the Brandon case) that the plaintiff may claim one sum, recover a smaller and still get the penalty.

**Justice Brewer** also said this:

"Further, the matter to be adjusted is one particularly within the knowledge of the carrier. It received the goods and has them in its custody until the carriage is completed. It knows what it received and what it delivered. It knows what injury was done during the shipment, and how it was done. The consignee may not know what was in fact delivered at the time of the shipment, and the shipper may not know what was delivered

to the consignee at the close of the transportation. The carrier can determine the amount of the loss more accurately and promptly and with less delay and expense than any one else, and for the adjustment of loss or damage to shipments within the State forty days cannot be said to be an unreasonably short length of time. It may be stated as a general rule that an act which puts in one class all engaged in business of a special and public character, requires of them the performance of a duty which they can do better, and more quickly than others, and imposes a not exhorbitant penalty for a failure to perform that duty within a reasonable time, cannot be adjudged unconstitutional as a purely arbitrary classification."

It seems quite clear from this passage that what the Court had in mind and did decide, (and **all** that it decided) was, that the fourteenth amendment was not infringed by a statute which imposed a penalty (1) where the claimant had justified his demand in its **amount** by judicial sanction, and (2) also where the matter to be adjusted was in fact peculiarly within the knowledge of the carrier. Because, say the Court, the carrier knows (1) what it received, (2) what it delivered, (3) what injury was done and how it was done. Manifestly the Court did not mean in that case to hold that such a statute would be upheld where those conditions do not exist. The Court did not mean to affirm, **as a rule of law,** that in **all** cases of loss or damage the facts are "peculiarly within the knowledge of the carrier;" and that the carrier knows "what injury was done." It is within common knowledge, and this Court will judicially know, that vast numbers of the losses and damages suffered in freight shipments are of such character that the carriers cannot know the nature or extent; for instance, losses from closed

packages through abstraction by thieves, breakages in closed packages, staining and wetting contents of closed packages, heating and decay in closed packages, etc., etc. (The very case at bar is an instance.) In those cases, and all similar, the loss or damage becomes known, and properly can only become known, after the goods have passed from the custody of the carrier, and when the boxes, or barrels or crates shall be opened by the consignees.

Even if the packages be opened, and the exact nature and extent of the physical damage be seen, yet still the accurate ascertainment of the **pecuniary** damages, involves so many considerations of various kinds; eg., of original quality and value, of condition when packed and shipped, of percentage of depreciation from the physical damage—that the most careful and conscientious appraisers might easily, and often would, differ amongst themselves about the final result. But the carrier, without adequate means of examination, **must** reach a correct result; as the Mississippi Court says, must tender the amount "actually due."

Clearly Mr. **Justice Brewer**, in his opinion in the **Seegers** case, did not have in mind, and he did not mean to say that the carrier better knew, and could more accurately and promptly determine, the pecuniary damages, than could the shipper. He had in mind, and was writing about the Carolina statute, which as a condition precedent, laid on the shipper the burdens (1) to state his claim truthfully, and (2) to prove that fact in Court. It is a great misconception of that opinion, to seize on those expressions, and on them base a decision upholding as

just and reasonable a classification which shifts the burden of a fair and accurate valuation of the loss from the shoulders of the owner and plaintiff, who should and does know all about the **value** of the goods damaged, to those of the defendant who does and can know nothing whatever about those values, and has no means to make any reliable determination.

Accepting the **Seegers** case to its fullest reach, as its rule is expressed and on the statute there involved, we still protest that the Mississippi statute is void; for it attempts to make a classification in and by which carriers alone have imposed on them the burden of ascertaining for a claimant of damages the true amount in money of such damages to his own property, with no obligation of honesty or truth on such claimant, under penalty in case of the very slightest underestimate by the carrier, and without any reference whatever to the honesty and good faith of the carrier. We submit that the classification made is not just or reasonable. Under it, the carrier may make a most expeditious investigation, and tender payment far within the time limit; but if it estimate the **claimant's** damages at even one cent below what the claimant can afterwards persuade a jury to fix, then the penalty follows.

The burden placed on the carrier is impracticable and unreasonable. For how can the carrier tell what the amount of damage is, exactly? If the carrier receive 100 bales of cotton and deliver 99, the answer is easy so far: one bale lost. If it deliver the 100 bales, and afterwards it is claimed that one bale was damaged in transit by stains—how can the carrier tell the **extent** of the damage

in dollars and cents. That depends on the penetration of the soakage and the quality of the cotton. The carrier delivers to the consignee a carload of cattle; afterwards a claim is made of shrinkage in weights caused by delay in transit; how can the carrier tell to the dollar? A box of china and glass is delivered, unopened; afterwards a claim is made for breakage; how can the carrier tell? Yet in all such cases, and they are innumerable, the shipper is by the statute turned loose to hold up the carrier if he can, and the carrier is penalized if, in its effort to reach a fair settlement, however diligent and honest it may be, it underestimate the damage even one cent. Nor does it make any difference under this statute that practically all of the means of making the correct estimate are in possession of the shipper, and none are possessed by the carrier. It is the carrier's burden, all the same.

The amount tendered by the carrier may in fact be full compensation; but if afterward the Court shall fix the damage at even one nickel more, the penalty follows. Nothing is more uncertain, in fact in such cases than the amount of actual damages. In specific cases men will differ more or less about it; the claimants, the witnesses, the jurors. This fact is within common experience. But yet, the statute requires the carrier to forecast the general result of all this uncertainty, and to forecast it accurately, or it shall be penalized.

To put a concrete case, a supposed case, for illustration. A shipment of miscellaneous household goods, loose and boxed: Claimant demands $200 damages; the carrier investigates promptly and offers $25; the Court

decides that the actual damages were $26. Notwithstanding the fact that the claimant is virtually convicted of trying to get eight times his actual damages, the carrier is penalized for misjudging the case to the extent of one dollar; and its promptness and good faith count for nothing.

We submit that this case cannot be judged exactly without looking into the evidence, under the rule announced by this Court in **Kansas City Railway Co. v. Albers**, decided February 26, 1912.

It will be seen that it is the case of a closed package. The undisputed evidence shows that there is no proof whatever that the keg in question was broken physically, or that it ever contained sixteen gallons of vinegar (the shortage claimed being six gallons) except the bare fact that the railway company's agent at Greenville marked the keg on the bill of lading as weighing 150 pounds. There is no evidence whatever that such marking was not a purely arbitrary fixation of weight, and the evidence suggests that it was. And such arbitrary fixations are within common knowledge.

On page 12 of their brief, Defendants in Error say: "The whole fallacy of the contention of the Plaintiff in Error is that they overlook the essential distinction which underlies the entire principle that the railroad company must perform its duty by offering to pay what it owes, much or little." To which, the reply is obvious: that our complaint is, not that the railroad company is compelled under penalty to pay within a stated time what it justly owes, but that the statute, (1) sets free the plain-

tiff from any obligation to fairness and truth, and at the same time, (2) imposes on the railroad company the burden to be judge of its adversary's case, and to determine what is the actual amount due its adversary, under a penalty for any the least underestimate, no odds what may have been its diligence and candour. If that sort of legislation is not unconstitutional, it ought to be.

We submit that the question is substantially settled by the case of **St. Louis, etc., Railway Co. v. Wynne,** decided by this Court on April 15, 1912.

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## THE QUESTION RAISED.

It is claimed by Defendant in Error that the constitutional question does not arise in this case, because the plaintiff below did recover the full amount of damages claimed.

It was the same objection which was made, and was denied in **St. Louis and S. F. R. Co. v. State,** 107 Pac., 929, 936.

The unconstitutionality of the statute in question is not a matter which comes into view collaterally or incidentally; but the judgment of the Court below directly enforces the penalty in the rendition of the judgment appealed from. There is either a constitutional and valid law or there is not; in the latter case, it necessarily follows that the fourteenth amendment is violated. Nor can it properly be said that because the legislature, if it had seen fit so to do, might have enacted a law to cover

the case at bar, therefore the statute actually passed will be enforced as if constitutional although had the jury fixed the value of the vinegar at ten cents less, the statute would be declared void.

In **Sully v. American Nat. Bank**, 178 U. S., 289, 299-300, one Carhart, a non-resident, was complaining of a Tennessee statute which undertook to regulate the priorities of simple creditors and mortgage creditors in cases of bond issues; and his complaint was that by the terms of the statute certain postponements were declared against non-resident mortgage creditors which were not declared against resident mortgage creditors. The statute had been enforced against him; but there were no resident mortgages. Speaking of Carstair's position that he was discriminated against, therefore, this Court said (p. 299-300):

"It is objected, however, on the part of the defendants in error, that this is a merely abstract or moot question, because there are no resident mortgagees, and their rights have not, therefore, been determined. The objection is not well taken. Although there are no resident mortgagees, in this case, yet the decree of the Court below, following the statute, has postponed the payment of the mortgage in favor of resident creditors whose debts accrued prior to the registration of that mortgage. If the statute does not permit such postponement against a resident mortgagee, then the postponement in the case of a non-resident mortgagee would be invalid. The postponement has in fact been made as against the non-resident mortgagee, and whether that postponement was legal and valid is no mere abstraction because by reason thereof this non-resident mortgagee has actually suffered a loss in the payment of his mortgage. It is therefore

entirely immaterial whether in this particular case there are or are not resident mortgagees. We are in this case necessarily brought to a decision of the question whether the postponement was valid; and that depends upon the question whether the act permits a similar postponement in the case of a resident mortgagee. If it does, it is conceded that the act is valid, so far as this particular question is concerned."

Just so: in the case at bar this statute has actually been enforced against Plaintiff in Error. They have suffered by it; and this is legally possible only under a constitutional law; and whether constitutional or not, does not depend on the accidents of the special case. Else would this Court in the **Sully** case have said that the Tennessee statute could not be weighed for the reason that no discrimination had been worked in fact in that case.

The contention is disposed of by **Howard v. I. C. R. R. Co.**, 207 U. S., 463, 501.

See also the **Mississippi Supreme Court** itself in **Ballard v. Miss. Cotton Oil Co.**, 81 Miss., 507, p. 573-574, where it said

"The act of the Court was an alleged judicial limitation of general words in a statute, by the evidence in each case, so as to hold one employe within and another employe without such general words. Limitation by judicial construction is not severance of a statute. Severance of a statute takes place only where both sets of provisions, constitutional and unconstitutional, appear upon the face of the statute itself, and the Court separates, if the provisions are not interdependent, the constitutional from the unconstitutional, and strikes from the statute the unconstitutional provisions, leaving the

constitutional provisions in the statute. * * * That test clearly is this: That whenever the Court finds on the face of a statute a number of different provisions, some constitutional and some unconstitutional, there it may sever, if they be not interdependent, between these provisions, striking out the unconstitutional; and, let it be marked, that in every such case there is something to sever between on the face of the statute. That is what is meant by the severance of a statute. But wherever a Court, in order to uphold the provisions of a statute as constitutional, has to interpolate in such statute provisions **not put there by the legislature**, in order, by such interpolation ,to make the provision which the legislature did put there constitutional, this is no case of severance in any proper legal sense; nor is it in any legal or logical sense a proper limitation of the provisions which are in a statute by judicial construction. Such action by a Court is nothing less than judicial legislation pure and simple."

The case should be reversed, we submit.

EDWARD MAYES,

Attorney for Plaintiff in Error.

C. N. BURCH,

Of Counsel.

No. [redacted]57.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1911.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error.

vs.

THE JACKSON VINEGAR COMPANY, Defendant in Error.

## BRIEF IN BEHALF OF THE DEFENDANT IN ERROR.

[redacted]

Attorney for Defendant in Error.

TUCKER PRINTING HOUSE JACKSON MISS

# In the Supreme Court of the United States

**October Term, 1911.**

THE YAZOO & MISSISSPIPI VALLEY RAILROAD COMPANY, Plaintiff in Error.

vs.

THE JACKSON VINEGAR COMPANY, Defendant in Error.

**No. 288.**

**Brief in Behalf of the Defendant in Error.**

## STATEMENT OF FACTS.

The Jackson Vinegar Company is a corporation at Jackson, Hinds County, Mississippi, engaged in the manufacture of cider and vinegar.

The Yazoo & Mississippi Valley Railroad Company is a carrier of passengers and freight, organized under the laws of the State of Mississippi, and operating several lines throughout the State.

On September 12, 1908, Yee Tun Chung shipped the defendant in error, from Greenville, Mississippi, to Jackson, Mississippi, a barrel of vinegar. On reaching the city of Jackson, the vinegar was six gallons short. The defendant in error gave notice to the railroad company of its claim in writing for six gallons of phosphate or vinegar at seventy-five cents per gallon, freight seventeen cents, interest nine cents, statutory penalty of twenty-five dollars, making a total of $29.76.

Payment not having been made on March 4th, 1909, suit was brought thereon before a justice of the peace in the city of Jackson, Mississippi, judgment

entered in favor of the plaintiff, and appeal was had by the plaintiff in error to the Circuit Court of the First District of Hinds County, Mississippi, which resulted in a judgment in favor of the defendant in error for $30.66, which included the statutory penalty of twenty-five dollars, from which judgment this appeal is taken. The Circuit Court of the First District of Hinds County being the Court of last resort under the laws of the State of Mississippi. There is no dispute about any question of fact in the case.

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## ARGUMENT.

The Legislature of the State of Mississippi, in 1908 enacted the following statute amending Section 4070 of the Code of 1906. The material part of said enactment is as follows:

> "Claims for damaged or lost freight to be settled promptly.
>
> **"4070. Railroads to settle claims for lost or damaged freight within reasonable time.** (Laws 1904, p. 152).—Railroads, corporations and individuals engaged as common carriers in this State are required to settle all claims for lost or damaged freight which has been lost or damaged between two given points on the same line or system, within sixty days from the filing of written notice of the loss or damage with the agent at the point of destination; and where freight is handled by two or more roads or systems of roads, and is lost or damaged, claims therefor shall be settled within ninety days from the filing of written notice thereof with the agent by consignee at the point of destination. A common carrier failing to settle such claims as herein required shall be liable to the consignee for twenty-five dollars damages in each case, in addition to actual damages, all of which may be recovered in the same suit, provided that this section shall

only apply when the amount claimed is two hundred dollars or less."

It is claimed in behalf of the plaintiff in error that the act in question is in violation of the organic law of the United States, in that it is deprived of its property without due process of law. In order to determine this question, it would be well to examine the fundamental principle upon which legislation of this character rests. It is a mistake to assume that the duty of a carrier ends merely with the delivery of the property entrusted to it for transportation. It owes to the parties in interest the duty, not only to transport within a reasonable time, but to transport safely and without damage; and in the event loss or damage is had to the property during the transportation, then it becomes the duty of the carrier to compensate the injured party, and the duty to make compensation is just as high and just as binding on the carrier after the loss or damage as any other duty incident thereto.

This was made very clear by this Court in the case of *Seaboard Airline vs. Seegers*, 207 U. S., p. 73, 52 Lawyers' Edition, p. 28, the Court using the following language:

> "We are of the opinion this case comes within the limits of constitutionality. It is not an act imposing a penalty for the non-payment of debts. As the Supreme Court of South Carolina said in *Best vs. Seaboard Airline*, 72 S. C., 479, 52 S. E. 223, the object of the statute was not to penalize the carrier for merely refusing to pay a claim within the time required, whether just or unjust; but the design was to bring about a reasonably prompt settlement of all proper claims, the penalty in case of a recovery in court operating as a deterrent of the carrier in refusing to settle just claims, and as compensation of the claimant for the trouble and expense of the suit which the carrier's unreasonable delay and refusal made necessary."

And the Court said in the same opinion:

> "Further, it must be remembered that the purpose of this legislation is not primarily to enforce the collection of debts, but to compel the performance of duties which the carrier assumes when it enters upon the discharge of its public functions."

Again, in the case of *Railroad Company vs. Mazursky*, 216 U. S., 122, 54 Lawyers' Edition, p. 417, the Court used the following language:

> "The statute in question is of a nature that is in aid of the performance of the duty of the Company that would exist in the absence of any such statute, and it is in nowise obstructive of its duty as a telegraph company. It imposes a penalty for the purpose of enforcing this general duty of the company."

The necessity for legislation of this character has grown out of the fact that railroad companies have disregarded this duty; that they have fallen into the habit of making the decision of their freight claim department on the justice of a shipper's claim the court of last resort; and not only that, but it is claimed on behalf of shippers that the carriers are inclined to take refuge in the small size of many claims and refuse to pay because of the well known fact that the shipper or consignee could not afford to litigate over a small claim. This fact was fully appreciated by the Court in the case of *Seeger Bros. vs. Seaboard Airline*, as will appear from the following language in the opinion:

> "While in this case the penalty is large as compared with the value of the shipment, yet it must be remembered that small shipments are the ones which especially need the protection of penal statutes like this. If a large amount is in controversy, the claimant can afford to litigate; but he can not well do so when there is but a trifle of a dollar or two in dispute, and yet justice requires that

his claim be adjusted and paid with reasonable promptness."

It will be noted that in the present case, the carrier has sixty days within which to adjust the claim, and is only liable for a penalty of twenty-five dollars. Whereas, in the last case cited, the penalty was fifty dollars, and the carrier had only thirty days within which to make adjustment; and it will further be noted that under the act in question, if the shipment is handled by more than one carrier, ninety days is permitted to complete the investigation and adjust the claim. In each instance written notice is first required to be given. The defendant in error complains in the present case that the act is unconstitutional because under its terms, a recovery might be permitted where the plaintiff did not recover the full amount of the claim. It might be stated in this connection that the question sought to be raised by the defendant in error is not presented in this record, since, in this case, the defendant in error recovered the full amount sued for. Certainly, the statute is constitutional and valid to that extent, and as to whether or not the defendant in error will be deprived of its property in violation of the constitutional provision where a recovery should be had for less than the amount demanded might be determined in some subsequent case, but does not arise in this record.

Learned counsel for the plaintiff in error are incorrect in their statement that this Court will not so construe a statute as to confine its operations within constitutional limits, if by its express terms it violates the constitution. While we shall present to this Court that this act as construed by our Supreme Court does not violate any provision of our organic law; still, we contend that under a record like the present one where the full amount demanded was recovered, the question urged upon this Court by the plaintiff in error is not even presented in the record. In other words, it is the duty of this Court to so construe a state statute, if possible, so that the same will not be in violation of the Constitution of the United States.

In the case of *Presser vs. The State of Illinois*, 116 U. S., p. 252, 29 Lawyers' Edition, p. 615, this Court dealing with an Illinois statute used the following language:

> "It is clear that the object was to forbid voluntary military associations unauthorized by law from organizing or drilling and parading with arms in the cities or towns of the state, and not to interfere with the organization, arming and drilling of the militia under the authority of the acts of Congress. If the object and effect of the sections were in irreconciliable conflict with the acts of Congress, they would, of course, be invalid. But it is a rule of construction that a statute must be interpreted so as if possible to make it consistent with the Constitution and the paramount law."

This case cites with approval the case of *Marshall vs. Grimes*, 41 Miss,. p. 31, wherein our Court uses the following language:

> "General words in the act should not be so construed as to give an effect to it beyond the legislative power, and thereby render the act unconstitutional. But if possible a construction should be given to it that will render it free from constitutional objections and the presumption must be that the Legislature intended to grant such rights as were legitimately within its power."

Even if our foregoing observations are not sound we respectfully submit to the Court that the legislative enactment in question is not susceptible of any construction which would be violative of our fundamental law; but on the other hand, the act has received such construction by our Supreme Court as would remove therefrom any constitutional objection urged by the plaintiff in error. There is but one difference between the statute in question and the South Carolina statute construed by this Court in the cases above referred to. That statute provided that the

plaintiff should only recover the statutory penalty in cases where a recovery of the full amount demanded was had. The statute now under review does not contain that provision. Does its absence render the statute unconstitutional in that the plaintiff in error thereby is deprived of its property without due process of law? The plaintiff in error says that the statute deprives it of its property without due process of law because by reason of the construction which it places upon the statute, a penalty is enforced merely for the collection of a debt and not to compel the peformance of a legal duty. Now, let's see if the statute is susceptible of the construction which the plaintiff in error puts upon the same. It is an academic rule of construction that the Supreme Court of the State of Mississippi is the sole judge of the meaning of a legislative enactment passed by the Legislature of this State, and in determining whether or not a given act exceeds the constitutional limits of the State Legislature, reference must first be had to the construction placed upon the act in question by the Supreme Court of the State. It may be that a legislative enactment on its face might be in violation of the fundamental law (though we do not make any such admission in reference to this statute), but if it should appear that the Supreme Court of the State in construing the act had put such a construction upon it as would restrain its operation within constitutional boundaries, then such a construction would be binding upon the Supreme Court of the United States; although a literal construction of the statute would lead to a different result.

Take, for instance, the case of *Kehrer vs. Stewart*, 197 U. S., p. 60, 49 Lawyers' Edition p. 663. The Legislature of the State of Georgia imposed a privilege tax of two hundred dollars on resident managing agents of non-resident packing houses. The Supreme Court of the State of Georgia in passing upon the act restrained it in its operation to intra-state business, although on its face the act applied to managing or resident managing agents of non-resident packing

houses, and on its face applied to interstate business. This Court held that in view of the fact that the Supreme Court of Georgia had restrained the operation of the act within constitutional limits, the same was perfectly valid. The Court uses the following language, speaking of the ecision of the Supreme Court of the State of Georgia:

> "It was, therefore, held that the tax so far as applied to meats sold in Chicago and shipped to the petitioner in Georgia for distribution could not be supported; but that so far as the petitioner was engaged in the business of selling directly to customers in Atlanta, he was engaged in carrying on an independent business as a wholesale dealer and was liable to the tax."

This decision was correct. The Court speaking further in reference to the opinion says:

> "Accepting this construction of the Supreme Court, we think the act so far as applied to domestic business is valid."

Again, see the case of *Osborne vs. The State of Florida*, 164 U. S., p. 650, 41 Lawyers' Edition, p. 586, wherein this Court had under construction a statute of the State of Florida, which on its face compelled all express companies doing business within the State to pay a certain privilege tax. The Supreme Court of the State of Florida had passed on the act and held that it only applied to intra-state business, although on its face in fact it did refer both to interstate and intra-state business. This Court, in sustaining the validity of the statute, used the following language:

> "The supreme Court of Florida has construed the ninth section of this act and has held in express terms that it does not apply to or affect in any manner the business of this company, which is interstate in its character; that it applies to and affects only its business which is done within the State or as is so termed local in its character; and it has held that under that statute, so long as the

express company confines its operation to express business that consists of interstate or foreign commerce, it is wholly exempt from the legislation in question."

This principle, however, is so firmly grounded in the jurisprudence of this country as to need no further citation of authority, and with this statement, we now refer this Court to the case of *Railroad Company vs. Brandon*, 98 Miss., p. 461, wherein the Supreme Court of this State, construing the identical statute removes therefrom the construction now sought to be placed upon it by the plaintiff in error in this case. The plaintiff in error says that under the statute as written, it will operate so as to deprive it of its property without due process of law, in that a penalty is imposed merely for non-payment of a debt. We say that this is untrue; that our Supreme Court in express terms says that the penalty under the act in question is one only to enforce a carrier to perform its duties as such by adjusting claims within the time prescribed by the statute, and expressly holds that if the railroad company in the performance of its duty investigates the claim and offers to pay the plaintiff the amount of the damages, that is to say, offers to perform its legal duty, the plaintiff then cannot recover the penalty. In that case the appellee shipped household furniture from Indianola, Mississippi, to Gibson, Mississippi. The furniture was delivered in a damaged and broken condition. The appellee put in a claim for sixty dollars actual damages. There having been no effort on the part of the railroad company to adjust the claim within the time required by the statute, suit was brought. Judgement was had for fifty dollars actual damages, and the statutory penalty of twenty-five dollars, making a total of seventy-five dollars. It was contended in that case that the statute was unconstitutional in that a recovery of the penalty was had without the plaintiff's recovering the entire amount sued for. The fallacy of the railroad company's position was that it was the duty of the railroad company to adjust the claim and to offer the amount of the

damage, and having made no offer and no effort to adjust the claim, if the plaintiff recovered only five dollars the railroad company was guilty of a breach of its duty as a carrier in not paying or offering to pay at least the five dollars. The Supreme Court of Mississippi answered the objection in the following language:

> "One of the duties of the carrier is to pay the party entitled thereto the actual damage sustained by him on account of the loss of or damage to freight while in its possession. The penalty imposed is for the failure to perform this duty within sixty days, or ninety days, as the case may be. The claim contemplated by the statute is the actual amount due, and not necessarily the amount claimed by the party suffering the damage. All the carrier is required to do in order to be relieved of the penalty is to pay or tender within sixty or ninety days to the party entitled thereto the amount actually due. Should such tender be made and refused, the penalty cannot be collected. The amount of damage sustained can be as easily ascertained by the carrier as by the claimant; in fact, in the language of the Supreme Court of the United States, in *Seaboard Air Line Railroad Company vs. Seegers, supra*: 'The matter to be adjusted is one peculiarly within the knowledge of the carrier. It receives the goods and has them within its custody until the carriage is completed. It knows what it received, and what it delivered. It knows what injury was done during the shipment, and how it was done. The consignee may not know what was in fact delivered at the time of the shipment, and the shipper may not know what was delivered to the consingnee at the close of the transportation. The carrier can determine the amount of the loss more accurately and promptly, and with less delay and expense than anyone else, and for the adjustment of loss or damage to shipments within the State forty days can not be said to be an unreasonably short length of time. It may be stated as

a general rule that an act which puts in one class all engaged in business of a special and public character, requires of them the performance of a duty which they can do better and more quickly than others, and imposes a not exorbitant penalty for a failure to perform that duty within a reasonable time, can not be adjudged unconstitutional as a purely arbitrary classification."

"No tender having been made of the amount actually due, the Court committed no error in refusing this instruction. There is no merit in the other matters complained of."

It will therefore be seen that under the construction of this act placed upon it by our Supreme Court, the penalty is for the purpose of compelling the carrier to perform a legal duty which it owes to the consignee. If the property is damaged in course of shipment, the carrier is presumed to know the extent of the damage and the value thereof; and out of this knowledge, coupled with its obligation, grows the legal duty to say to the consignee, "The damage to your property was so much; here's your money." In that case the plaintiff could not recover the penalty unless he recovered more than the amount tendered by the railroad company. In other words, if he recovered only the amount tendered or less, it would be conclusive that there would be no breach of duty on the part of the railroad comnpay and it would, therefore, not be liable for the penalty. If, however, the plaintiff should recover more than the amount of the penalty, it would then be conclusive that the railroad company had been guilty of a violation of its duty, and the penalty would be permitted. We will further state that in using the word "tender" we do not believe that our Supreme Court meant to say that there should have been a technical tender in all respects as is known to the common law. The act was intended, and all our Court intended to say was that there should be an honest investigation and an honest effort to adjust the claim by ascertaining the extent of the damage, and in good faith offering to

pay the consignee the amount thereof. The fact that the plaintiff does not recover the entire amount sued for should not deprive him of his right of recovery. The question is, did he recover more than the railroad company was willing to pay? Learned counsel for the plaintiff in error, in their argument on page 4, of their brief, use the following language:

> "For illustration, under the Mississippi statute a claim could be submitted for damages inflicted on a shipment of freight, such damages being claimed to be one hundred dollars. If the railroad company refused to settle it within the period fixed by the statute, and suit be brought, twenty-five dollars is recoverable, provided, only the plaintiff shall recover any damages whatever. If he obtain judgment for five dollars, he gets his twenty-five dollars penalty, although in fact the demand propounded by him which the railroad company declined to settle, or failed to settle, was twenty timesas great, and although, therefore, its failure to settle stands justified both morally and legally."

A complete answer to the whole proposition is that the railroad company should have promptly ascertained the amount of damages and offered the five dollars. The whole fallacy of the contention of the plaintiff in error is that they overlook the essential distinction which underlies the entire principle that the railroad company must perform its duty by offering to pay what it owes, much or little. Then, when it has done that, the penalty is no longer recoverable. But a railroad company cannot be permitted to do as it did in the Brandon case, accept the property for shipment, take the freight, admittedly damage it in transit, say to the shipper, "I will pay you nothing; I will not perform my legal duty, and then, forsooth, because the plaintiff possibly over-estimated his damages, and does not get quite all that he sues for, say there was no breach of legal duty on its part, that a penalty is being imposed for the non-payment of a

debt. We respectfully submit that the entire argument is fallacious and falls to the ground of its own weight. Our Supreme Court, by its very able opinion in the case above referred to, has made it exceedingly clear to railroad companies that they need not be, and will not be liable for the penalty if they will simply comply with the spirit and purpose of the statute; that is to say, make a sincere and honest effort to ascertain the extent of the damage and make compensation for the same.

We would, in conclusion, of course, invoke the usual rule that every presumption will be indulged in favor of the constitutionality of the act in question, and that the same will not be declared in violation of the paramount law, unless the act is capable and susceptible of no other reasonable construction. This Court will assume, and will act upon the assupmtion that the Legislature of the State of Mississippi in passing this law had wise and patriotic motives in doing so; and that it was endeavoring to keep within the limits of its legislative power as fixed by the Constitution of the United States.

We respectfully submit that the case should be affirmed, and we ask this Court to do so.

Respectfully submitted,

Attorney for the Defendant in Error.

# No. 57.

## IN THE
# SUPREME COURT OF THE UNITED STATES.

TO THE OCTOBER TERM, 1912.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACKSON VINEGAR COMPANY, DEFENDANT IN ERROR.

## REPLY BRIEF FOR DEFENDANT IN ERROR.

W. H. WATKINS,
ATTORNEY FOR DEFENDANT IN ERROR.

TUCKER PRINTING HOUSE JACKSON MISS

# IN THE SUPREME COURT OF THE UNITED STATES.

TO THE OCTOBER TERM, 1912.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

JACKSON VINEGAR COMPANY, DEFENDANT IN ERROR.

## REPLY BRIEF FOR DEFENDANT IN ERROR.

It is contended by counsel for Plaintiff in Error, in this case that the case of *Railway Company vs. Wynne* decided April 15th, 1912, by this Court, is decisive of this case. But that decision has no applicability to the present case. The fundamental distinction between the case at bar and the case referred to is that a railroad company is not liable as a carrier for the killing of live stock. In fact, the railroad company might not be liable at all for the death of live stock killed upon its track, being liable in such cases only for negligence.

In the present case the liability of the Plaintiff in Error is that of a carrier of freight, wherein it is an insurer, and absolutely liable except for an act of God and the public enemy.

As was said by this Court in *Seaboard Air Line vs. Seegers*, 52 Lawyers' Edition, 108, a penalty can only be justified on the ground that it is imposed to compel the performance of a public duty. The Court used the following language:

> "Further, it must be remembered that the purpose of this legislation is not primarily to enforce the collection of debts, but to compel the performance of duties which the carrier assumes when it enters upon the discharge of its public functions."

A railroad is under no public duty to pay for stock killed upon its track, even through its negligence. It is simply liable as any other *tort feasor* to use reasonable and ordinary care. The penalty in the Wynne case referred to, imposed a special hardship because, as was shown in that case, the railroad company contended that it was not guilty of any negligence at all, and, therefore, owed nothing for the killing of the animals in question. It was, therefore, an exceedingly harsh statute which deprived it of its right to go into the courts of the State and contest a demand for which it might not be liable at all only upon condition that if it was unsuccessful in maintaining its defense, it should have to pay double damages and attorneys' fees. Such a statute, of course, had a tendency, and the natural effect of it was to deprive the company of its property without due course of law. No such state of facts, however, is presented in this record. There was no question of liability involved. The sole question was one as to the measure of damages. The railroad company refused to pay or offer any sum whatever. The defendant in error recovered the full amount demanded and sued for, and, therefore, the penalty was imposed.

We wish to call the attention of the Court, for the purpose of replying thereto, to some extracts from the reply brief of the plaintiff in error. On page 4, the following language is used:

"But we submit that the statute so construed none the less violates the Fourteenth Amendment, because:

(1) "It awards a penalty to the plaintiff even when he has propounded an excessive or fraudulent claim, and at the same time (2) requires the carrier, in all cases, no odds what might be the circumstances, to determine accurately, and under pain of penalty for any failure, and without regard to the good faith of the carrier the amount of the claimant's damage."

This statement is a total misconstruction of the statute, and the construction put upon it by our Supreme Court in the Brandon case. In the Brandon case the railroad company owed to the claimant the duty imposed by law independently of the statute, to seasonably adjust the claim. The railroad company, in plain violation of its duty, independently of the statute, not only refused to pay the actual damages, but refused to offer to pay any sum whatsoever. The plaintiff did not recover in that case quite the amount demanded, but there having been no effort on the part of the railroad company to adjust the claim, it was held that the penalty was recoverable. The fundamental principle upon which the case rests is that a carrier must make an honest effort to adjust the claim; and if such is done, and the amount due or found to be due is paid or tendered, then no penalty whatsoever is recoverable. It seems to us that our Court has made that exceedingly clear; that good faith is all that is required of the carrier under the statute.

Again, on page 7, counsel for plaintiff in error use the following language:

> "It is within common knowledge, and this Court will judicially know that vast numbers of the losses and damages suffered in freight shipments are of such character that the carriers cannot know the nature or extent; for instance, losses from closed packages, etc."

And, again, on page 10, counsel use the following language:

> "To put a concrete case, a supposed case for illustration. A shipment of miscellaneous goods, loose and boxed; claimant demands $200.00; the carrier investigates promptly and offers $25.00; the court decides that the actual damages were $26.00; the carrier is penalized for misjudging the case to the extent of one dollar."

Neither of the above quotations taken from the brief of counsel for the plaintiff in error, are justified by anything, either in the statute or said by our Court in construing the same. It must be born in mind that in the Brandon case the court was construing the statute on the undisputed facts before it, to-wit: a perfectly just claim, with absolutely no effort to adjust it; hence a gross breach of duty upon the part of the railroad company; therefore, the statute was applicable. Our Court has never said, however, in any case that if the railroad company made an honest effort to arrive at the damages, but, owing to the concealed nature thereof, or other difficulties in the way, it was impossible to arrive at the same accurately; or if the nature of the property and the character of the damages were such as that two honest men would differ as to the amount of the damages which should be awarded, that the penalty would be allowed if the plaintiff should recover less than the amount demanded and sued for. Upon the other hand, we understand from the language in the Brandon case that only an honest effort upon the part of the carrier is all that is demanded, and we are not of the opinion that the penalty would be recoverable if the damages were of such character as that two men, or twelve men, might disagree in regard to the amount thereof, and the carrier should make an honest effort to adjust the claim. The fact that a jury gave the plaintiff a dollar, or a few dollars more than the carrier offered would not justify the penalty unless the plaintiff recovered the full amount demanded and sued for. We say that our Court has never put any such construction upon the statute, and the illustrations which are used by counsel for plaintiff in error are extreme cases which have not yet been passed upon by our Supreme Court; and until our Court shall hold that the penalty would be recoverable under such a state of facts, then this Court should not hold the statute unconstitutional. Suppose, for instance, in the Brandon case the carrier should have shown

that it was difficult with accuracy to estimate the actual damages; that it had honestly tried to do so; should have shown the further fact that two different juries might have disagreed in regard to the damages; that it had estimated the damages at forty dollars instead of fifty, as found by the jury, and had paid or offered to pay the forty dollars; if there was a difference of opinion in regard to the controversy, we do not believe that the penalty would be recoverable, unless the plaintiff recovered the full amount demanded and sued for; and we respectfully submit that until our Court shall have decided that the statute is applicable and the penalty recoverable under such a state of facts, this Court should not hold the statute unconstitutional. Upon the other hand, this Court should proceed upon the assumption that our Supreme Court will restrain the statute within constitutional limitations, and we have no doubt that *a mild intimation* from this Court would be sufficient for all purposes.

The Court must bear in mind, as we have no doubt that it does, that this was an intra-state shipment; that this act was passed by our legislature, which presumably gave to the constitutionality of the statute its honest and patriotic judgment; that the legislature was endeavoring to remedy an evil which has grown to be national, that is to say, the custom of railroad companies in refusing to settle small claims on account of the expense incident prosecuting them on the part of the plaintiff. If the statute would be unconstitutional under the extreme statement of facts set out in the brief of counsel for the plaintiff in error, above referred to, we submit that it can be safely assumed that when those facts are presented to our Court, a construction consistent with the holdings of this Court and with the organic law of the United States will be placed upon the statute.

Again, on page 11, counsel for plaintiff in error use the following language:

"It will be seen that it is the case of the closed package. The undisputed evidence shows that there is no proof whatsoever that the keg in question was broken physically or that it ever contained sixteen gallons of vinegar, except the bare fact that the railroad company's agent at Greenville marked the weight of the keg on the bill of lading as being one hundred and fifty pounds."

We wish to call the attention of the Court to the fact that the question as to the justice of the claim can not, of course, be raised in this Court. The State court found that the claim was a correct claim for the full amount, and such finding is conclusive upon this Court.

*Chrisman vs. Miller*, 49 Lawyers' Edition, 470;
*Hedrick vs. R. R. Co.*, 42 Lawyers' Edition, 320;
*Thayer vs. Spratt*, 47 Lawyers' Edition 485;
*Israel vs. Arthur*, 38, Lawyers' Edition, 474;
*Quimby vs. Boyd*, 32 Lawyers' Edition, 502.

And in regard to the gentle insinuation of counsel for the plaintiff in error that the marking of the weight may have been purely an arbitrary fixation, we call the attention of the Court to the fact that the undisputed evidence in the case showed that it was the custom and positive duty of the employe receiving the shipment to weigh the same and properly insert the weight in the bill of lading. The testimony of F. C. Nelson, beginning on page 3; testimony of H. A. Davis, record page 10. The agent who issued the bill of lading was not put upon the stand; and in the lower Court, and in this Court, it will be conclusively presumed against the railroad company that the weight was properly inserted in the bill of lading; in fact, the evidence undisputedly establishes the fact that the keg of vinegar when delivered to the railroad company, was full of vinegar, and that its weight was one hundred and fifty pounds. Certainly, when this Court approaches the question, it will proceed upon the conclusive presumption that the keg of vinegar weighed

one hundred and fifty pounds, and that the shipment was short when it reached the place of destination, such facts having been established in the trial court.

Counsel for plaintiff in error complain that the classification of the statute in question is unreasonable. We wish to call the attention of the Court to the fact that the statute includes all carriers; and under the case of *Seaboard Air Line vs. Seegers, supra*, such classification was held to be sufficient.

We respectfully submit that the judgment of the court below is correct, and the case should be affirmed.

Attorney for Defendant in Error.

# YAZOO AND MISSISSIPPI VALLEY RAILROAD CO. *v.* JACKSON VINEGAR CO.

ERROR TO THE CIRCUIT COURT OF HINDS COUNTY, STATE OF MISSISSIPPI.

No. 57. Submitted November 13, 1912.—Decided December 2, 1912.

The statute of Mississippi imposing a penalty on common carriers for failure to settle claims for lost or damaged freight in shipment within the State within a reasonable specified period is not unconstitutional under the Fourteenth Amendment, as depriving the carrier of its property without due process of law or as denying it the equal protection of the laws, as to claimants presenting actual claims for amounts actually due.

It is within the police power of the State to provide by penalty for delay a reasonable incentive for prompt settlement without suit of just demands of a class admitting of special legislative treatment; in this case of claims against common carriers for damage to goods shipped between two points within the State.

This court deals with the case in hand and not with imaginary ones; and if a state statute is constitutional as against the class to which the party attacking it belongs, it will not consider whether the same statute might be unconstitutional as applied to other classes not before the court.

*Quære*, and not now to be decided, whether the statute now sustained as constitutional as against the party attacking it would be void *in toto* if unconstitutional as against other classes who have not yet attacked it.

THE facts, which involve the constitutionality of a statute of Mississippi imposing penalties on common carriers for failure to settle claims for damage to goods in shipment within the State, are stated in the opinion.

*Mr. Edward Mayes* and *Mr. Charles N. Burch* for plaintiff in error.

*Mr. William H. Watkins* for defendant in error.

hold that, as applied to cases like the present, the statute is valid. How the state court may apply it to other cases, whether its general words may be treated as more or less restrained, and how far parts of it may be sustained if others fail are matters upon which we need not speculate now. *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Lee* v. *New Jersey*, 207 U. S. 67, 70; *Southern Railway Co.* v. *King*, 217 U. S. 524, 534; *Collins* v. *Texas*, 223 U. S. 288, 295; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550.

The judgment is accordingly

*Affirmed.*